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INTELLECTUAL PROPERTY THEORY

INTENSIVE COURSE

VOLUME 2

PROFESSOR WENDY J. GORDON

Faculty of Law
University of Toronto

September 1997

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Intellectual Property Theory
Prof. W.J. Gordon
University of Toronto
Fall, 1997

SECOND SYLLABUS

Our class will be meeting:

Monday, September 22	12:00-	2:00
Tuesday September 23	1:00-	2:00
Wednesday. September 24	12:00-	2:00
Thursday, September 25	1:00-	2:00
Monday, September 29	12:00 -	2:00
Tuesday, September 30	12:00-	2:00 ¹
Monday, October 6	12:00-	2:00
Tuesday, October 7	1:00 -	3:00

OVERVIEW OF PHOTOCOPIED MATERIALS
Table of Contents

The first packet contained:

- Excerpt from Gordon. *An Inquiry into the Merits of Copyright*. 41 Stanford Law Review 1353-94 (1989);
- Copyright Exercise, with the U.S. Constitution's Copyright Clause appended at its end;
- United States Copyright Act, 17 U.S. Code. sections 101 *et seq.*

Additional photocopied material provided:

- Gordon, *Fair Use as Market Failure*, 82 Columbia Law Review 1600 (1982);
- Landes & Posner. *An Economic Analysis of Copyright Law*. 18 Journal of Legal

¹This class date may have been inadvertently omitted from a prior list. We do indeed have class on this date.

Studies 325 (1989);

- Kitch, *The Nature and Function of the Patent System*, 20 Journal of Law & Economics 265;
- Gordon, *Asymmetric Market Failure and Prisoner's Dilemma in intellectual Property*, 17 U. Dayton Law Review 853 (1992);
- Liebowitz, *Copyright Law, Photocopying, and Price Discrimination*, 8 Research in Law and Economics 181 (1986) (Zerbe, ed.);
- Gordon, excerpt from *Toward a Jurisprudence of Benefits: The Norms of Copyright and the Problems of Private Censorship*. 57 University of Chicago Law Review 1009. 1032-1049 (1990);
- International News Service v. Associated Press, 248 U.S. 215 (1918);
- Gordon, *On Owning Information: Intellectual Property and the Restitutionary Impulse*, 78 Virginia Law Review 149 (1992)
- Gordon, *Of Harms and Benefits: Torts, Restitution, and Intellectual Property*, 21 Journal of Legal Studies 449 (1992);
- Gordon, *A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property*. 102 Yale Law Journal 1533 (1993);
- NFL v. State of Delaware. 435 F. Supp. 1372 (1977)
- Lange, *Recognizing the Public Domain*, 44 Law & Contemporary Problems 147 (1981);
- Litman, *The Public Domain*, 19 Emory Law Journal 965 (1990).

For first class on Monday, September 22

The first class was the "descriptive introduction to Copyright Law, American style". For this class you:

- read the photocopied excerpt from Gordon, *An Inquiry into the Merits of Copyright*, 41 Stanford Law Review 1353-94, and
- prepared the Copyright Exercise.

For classes on Tuesday September 23 & Wednesday, September 24 :

These two classes, taken together, will provide a basic introduction to the economics of copyright and patent. All readings are from the photocopied materials.

- Read from page 1605 ("An Overview of the Market Model") through 1614 of Gordon, *Fair Use as Market Failure*, 82 Columbia Law Review;
- Read pages 325-333 and 344-47 of Landes & Posner, *An Economic Analysis of Copyright Law*, 18 Journal of Legal Studies;
- Read all of Kitch, *The Nature and Function of the Patent System*, 20 Journal of Law & Economics 265;
- Read all of Gordon, *Asymmetric Market Failure and Prisoner's Dilemma in Intellectual Property*, 17 U. Dayton Law Review 853 (1992)

For class on Thursday, September 25:

This class will introduce some of the important limits on intellectual property law, primarily duration and the copyright doctrine known as the "idea/expression dichotomy." In advance of this class, please read:

- pages 181-88 and 192-200 of Liebowitz, *Copyright Law, Photocopying, and Price Discrimination*, 8 Research in Law and Economics 181;
- pages 347-57 and 361-63 of Landes & Posner, *An Economic Analysis of Copyright Law*, 18 Journal of Legal Studies.

For class on Monday, September 29:

This class will focus on the general defense to copyright infringement known as the "fair use". Though the Canadian and American statutory approaches to "fair use" are somewhat different, the generality of the American approach permits a wide degree of inquiry into the underlying purposes and institutions of copyright. In advance of this class, please read:

- section 107 from the United State Copyright Act (available in your first packet);
- pages 1614-35 of Gordon, *Fair Use as Market Failure*, 82 Columbia Law Review;
- pages 188-91 of Liebowitz, *Copyright Law, Photocopying, and Price Discrimination*, 8 Research in Law and Economics;

- pages 357-61 of Landes & Posner, *An Economic Analysis of Copyright Law*, 18 Journal of Legal Studies.

For class on Tuesday, September 30:

Today's class will look at connections between intellectual property and the common law. This class will also provide a transition in our normative inquiry: from our previous focus on the market-failure model of economics, we will begin considering issues of 'rights'. To prepare for class, please read:

- International News Service v. Associated Press, 248 U.S. 215 (1918);
- and EITHER

all of Gordon, *Of Harms and Benefits: Torts, Restitution, and Intellectual Property*, 21 Journal of Legal Studies 449;

OR

pages 149-66 and 196-266 of Gordon, *On Owning Information: Intellectual Property and the Restitutionary Impulse*, 78 Virginia Law Review.

Also, though optional: read one of the Applications you'll find at or after page 266

For class on Monday, October 6:

Today's class will focus on rights-- both authors' rights and rights of the public. In advance of class, please read:

- pages 1032-1049 from Gordon, *Toward a Jurisprudence of Benefits*, 57 University of Chicago Law Review; and
- pages 1540-83 of Gordon, *A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property*, 102 Yale Law Journal.

Also, though optional: read one of the Applications you'll find at or after page 1583.

For class Tuesday, October 7:

In advance of this class, please read

- NFL v. State of Delaware, 435 F. Supp. 1372 (1977)

- and EITHER of the following articles in their entirety:

Lange, *Recognizing the Public Domain*, 44 Law & Contemporary Problems;

OR

Litman, *The Public Domain*, 19 Emory Law Journal.

